IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-03-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE S. RAJESWARAN

WRIT APPEAL No.3796 OF 2002

1. N. Kandasamy Udayar
   S/o. Natesa Udayar

2. N. Thottiyan
   S/o. Natesa Udayar

3. A. Ponnuswamy
   S/o. Ayyaperumal

4. L. Ponnuswamy
   S/o. Lakshmana Udayar

5. Adhimoola Udayar
   S/o. Vellamuthu Udayar

6. M. Ponnuswamy
   S/o. Muthu Udayar

7. P. Vellamuthu
   S/o. Ponnuswamy Udayar

8. G. Kannaya Chettiar
   S/o. Gopal Chettiar

9. G. Krishnamurthy
   S/o. Gopal Chettiar

10. M. Vadivel
    S/o. Muthuswamy .. Appellants/Petitioners

Vs.

सत्यमेव जयते
WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

1. The State of Tamil Nadu,
   Rep. by its Secretary
   Adhi Dravidar and Tribunal
     Welfare Department,
   Fort St. George, Chennai 9.

2. The Special Tahsildar,
   Adhi Dravidar Welfare,
   Perambalur, Trichy District.

3. Tmt. Amudha,
   W/o. Elangovan

4. Tmt. Malgova,
   W/o. Arjunan

5. Tmt. Vembu,
   W/o. Ayyan Perumal

6. Tmt. Indira,
   W/o. Periasamy

7. Tmt. Pappa,
   W/o. Arasan

8. Tmt. Marudambal
   W/o. Arumugham

9. Tmt. Saroja,
   W/o. Ponnan

10. Tmt. Lakshmi
    W/o. Ayyan

11. Tmt. Mookayee
    W/o. Sri Rangan

12. Alangammal
    W/o. Murugesan
    Respondents 3 to 12 impleaded
    vide order dated 6.2.2006 in
    WAMP.No.197 of 2006 .. Respondents

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 7.2.2001 passed by the learned single Judge in W.P.No.9332 of 1994, filed under Article 226 of the Constitution of India for issuance of a writ of declaration declaring that the notification issued of the first respondent under Section 6 of the of the Land Acquisition Act in G.O. Ms. NO. 1138 Adi Dravidar Tribal Welfare dated 05.07.90 is lapsed and null and void

For Appellants : Mr.R. Balasubramaniam

For Respondents 1& 2 : Mr.P. Subramanian, AGP

Respondents 3to12: Mr.M.V. Muralidharan

- - -

J U D G M E N T

P.K. MISRA, J

This appeal is filed against the order of the learned single Judge in W.P.No.9332 of 1994, wherein the present appellants had challenged the notification issued by the State of Tamil Nadu under Section 6 of the Land Acquisition Act, 1894 as illegal and void. Such writ petition was dismissed.

2. Writ Petition No.9332 of 1994 was filed by several land owners. The land was sought to be acquired for the welfare of Adi-Dravida. Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") was published in the Gazette on 5.7.1989. Subsequently, declaration under Section 6 was issued on 3.7.1990 and published in the Gazette on 5.7.1990. At that stage, W.P.No.14810 of 1990 was filed by several land owners, including the present appellants, and interim stay was granted on 12.9.1990. Such writ petition was dismissed on 26.6.1992. Thereafter, the award was passed on 20.4.1994.

3. In W.P.No.9332 of 1994, filed by the appellants, the main contention raised was to the effect that the Collector did not make an award under Section 11 of the Act within the stipulated period of two years from the date of publication of declaration under Section 6 as envisaged under Section 11-A.

4. The learned single Judge negatived such contention by observing that the petitioner had challenged Section 6 declaration by filing W.P.No.14810 of 1990, which was dismissed on 26.6.2002.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Learned single Judge observed that excluding the period of two years during which the stay was in operation, the period of two years for making an award commenced only on 26.6.1992 and the award having been passed on 20.4.1994, it must be taken that the award has been made within two years by excluding the period during which stay had been granted. The order of the learned single Judge is not very clear as to when and in which case stay was granted and which period should be excluded.

5. So far as W.P.No.14810 of 1990 is concerned, it appears that interim stay was granted on 12.9.1990 and the writ petition was dismissed on 26.6.1992 and, therefore, the period to be excluded in accordance with Section 11-A of the Act is from 12.9.1990 to 26.6.1992. If the matter would have rested there, we would have interfered with the proceedings as it can be seen that even after excluding the aforesaid period, the award was not made within two years. However, from the records it is apparent that the very same notification was also challenged by some other land owners in W.P.No.12222 of 1990, wherein interim stay was granted on 5.7.1990 and ultimately such writ petition was dismissed on 29.4.1992. The question is whether such period from 5.7.1990 till 29.4.1992 is to be excluded.

6. The language of Section 11-A makes it clear that the period during which there is any stay is required to be excluded. It is not necessary that stay should have been at the instance of the person who is before the court in that particular case.

7. In the present case, initially stay was there at the instance of some other land owners, who had challenged the very same land acquisition in W.P.No.12222 of 1990. In such writ petition, the stay order continued from 5.7.1990 till 29.4.1992, when such writ petition was dismissed. By then W.P.No.14810 of 1990, at the instance of the present appellants, was pending wherein stay was operative and such stay got vacated only with the dismissal of such subsequent writ petition on 26.6.1992. Therefore, the entire period from 6.7.1990 till 26.6.1992 is required to be excluded. If such period is excluded, the award passed on 20.4.1994 is obviously within two years period. Such contention therefore cannot be accepted.

WEB COPY

8. Learned counsel appearing for the appellants has further contended that since previous approval of the appropriate Government has not been obtained by the Collector before passing of the impugned award, the land acquisition proceedings are held to be void abi initio.

9. Learned counsel for the appellants has placed reliance upon Section 11(1) of the Land Acquisition Act, which is as

https://hcservices.ecourts.gov.in/hcservices/

follows:-

> "11. Enquiry and award by the Collector.- (1) On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under Section 9 to the measurements made under Section 8, and into the value of the land at the date of the publication of the notification under Section 4, sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-
>
> (i) the true area of the land;
>
> (ii) the compensation which in his opinion should be allowed for the land; and
>
> (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him;
>
> Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf:
>
> Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf."

10. The condition contained in the first proviso requiring the making of the award by the Collector with the previous approval of the appropriate Government or authorised officer has been held to be mandatory in (1994) 5 SCC 686 (STATE OF U.P. AND OTHERS v. RAJIV GUPTA AND ANOTHER). It has been laid down in the said decision that no award can be made without prior approval of the Government or its authorised officer and any violation of such requirement will entail the award as null and void and illegal.

11. Since this question had not been raised in the affidavit filed in support of the writ petition or raised before the learned single Judge and has been raised for the first time in the grounds of the present appeal, we have permitted the counsel appearing for the State to produce the relevant records and documents.

12. Learned counsel appearing for the State has produced the relevant orders issued by the Government as per G.O.Ms.No.1027 Revenue Department dated 25.9.1992. This indicates that a District Collector / Addl. Collector / District Revenue Officer is authorized to accord approval to such award not exceeding Rs.20 lakhs. Other

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

materials produced by the counsel appearing for the State indicate that the Abstract showing compensation awarded to land owners in Award No.1/94-95 has been approved by the District Revenue Officer on 19.4.1994. In other words, there appears to be prior approval by the District Revenue Officer.

13. Learned counsel appearing for the appellants has placed reliance upon an unreported decision of a single Judge in W.P.No.7908 of 2000 disposed of on 16.7.2004, wherein, one of us (P.K. Misra, J), quashed the award as invalid on the ground that prior approval of the District Collector had not been taken. Learned counsel for the appellants has submitted that a reading of the said decision indicates as if the approving authority can only be the District Collector. The said decision does not lay down in so many words the proposition that inspite G.O.Ms.No.1027 dated 25.9.1992, the District Revenue Officer cannot be the approving authority. On the other hand, it has been observed therein that even assuming that the District Revenue Officer is authorised, the approval was given by the District Revenue Officer after award had been passed and therefore there was no prior approval as required under Section 11 of the Act. Therefore, such decision is not applicable.

14. In such view of the matter, we do not find any merit in this appeal, which is accordingly dismissed. No costs.

Dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

1. The Secretary
   Adhi Dravidar and Tribunal
     Welfare Department,
   Fort St. George, Chennai 9.

2. The Special Tahsildar,
   Adhi Dravidar Welfare,
   Perambalur, Trichy District.

+ one cc to the Government Pleader sr no. 13529
+ one cc to Mr. M.V. Muralidharan, Advocate sr no. 13602

mj(co)
nm(22.03.07)

W.A.NO.3796 of 2002

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/